IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY APPLICATION NO. 410 OF 2007
IN
COMPANY PETITION NO. 88 OF 1987

In the matter of M/s. Dempo Steamships Limited.

Vidya Bhushan Verma. ... Applicant.

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Mr. Janak Dwarkadas with Sharan Jagtiani i/b. D.H. Law Associates for the Applicant.
Mr. De Vitre Fredun with Vindal Kothari i/b. Apex Law Partners for Respondent 2.

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CORAM : DR. D.Y.CHANDRACHUD,J.

05th April 2007.

P.C. :

. The Applicant is an ex-employee of Dempo Steamships Limited which is in liquidation. It has been stated before the Court that the Applicant had instituted proceedings before the Small Causes Court at Mumbai for declaring him as a tenant. The suit was dismissed. An Appeal was dismissed by the Appellate Bench of the Small Causes Court and a Writ Petition under Article 227 (Writ Petition 6687 of 2007) was withdrawn before a learned Single Judge of this Court on 18th January 2007.

2. It has been stated before the Court that a decree was obtained against the company by the State Bank of India in a proceeding before the Debt Recovery Tribunal in the amount of Rs.51.31 crores. The Second Respondent - Asset Reconstruction Company India Limited claims to be the assignee of the decree. It has been stated before the Court that the private sale of the immovable property comprising of flat 13-A, Lands End, Doongersi Road, Malabar Hill, Mumbai - 400 006 has been proposed as between the Applicant and the Second Respondent at a consideration of Rs.3.15 crores before the Debt Recovery Tribunal. The Official Liquidator has filed an affidavit before the Debt Recovery Tribunal opposing the private sale and the material part of his objection reads thus :-

> " That the Official Liquidator submits that for the purpose of ensuring optimum value is realized from the sale of Company's assets and for safeguarding the interest of Workmen and Creditors of the Company (In

> Liqn.) it is necessary to sell the assets by way of public auction and not by way of private treaty. Hence it is prayed that attempts to be made for sale of the said property by way of public auction while also notifying the details of encumbrances and making the prospective buyer responsible for sorting out the problems, after getting the same valued by the approved Valuer on the panel of this Hon'ble Tribunal & after ascertaining the present market price."

The objection has been placed on an affidavit dated 7th March 2007 filed by the Liquidator before the D.R.T. in recovery proceedings.

3. The relief that has been sought by the Applicant in the Company Application is that the Official Liquidator be restrained by an order of this Court from opposing or objecting to the proposed sale in favour of the Applicant by private treaty; that the Liquidator be restrained from

filing any application or affidavit before the Recovery Officer for the sale by public auction and that in the alternative, this Court should sanction the sale of the said flat to the Applicant by the Second Respondent.

4. In the Judgment of the Supreme Court in **Allahabad Bank V/s. Canara Bank** (2005) 8 SCC 200, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 fell for consideration. The judgment of the Supreme Court construes the powers of the Company Court under the provisions of the Companies Act, 1956 vis-a-vis those of the Debt Recovery Tribunal under the Act of 1993. The Supreme Court held that the RDB Act constitutes special legislation as distinguished from the Companies Act, 1956 which is a general statute, and the special enactment would override the general. Alternatively, it was held that even if both the statutes are regarded as special legislation, the RDB Act being a later enactment of 1993 would prevail. The Supreme Court has held that in the matter of adjudication, execution and working out priorities, it is the Debt Recovery

Tribunal constituted under the RDB Act that has jurisdiction. In the subsequent decision in **Rajasthan State Financial Corporation V/s. Official Liquidator** (2005) 8 SCC 190, a Bench of 3 learned Judges of Supreme Court considered the Judgment in **Allahabad Bank**, amongst other decisions, and the Supreme Court held thus :-

> " The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security. The distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529-A read with Section 529 of the Companies Act. After all, the Liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution pari passu with the secured creditors and the duty for

> further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the Company Court. In other words, the distribution of the sale proceeds under the direction of the Company Court is his responsibility. **To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure in the light of the directions of the Company Court, that a proper price is fetched for the assets of the company-in-liquidation.** It was in that context that the rights of the Official Liquidator were discussed in International Coach Builders Ltd." (emphasis supplied).

In paragraph 18 of the Judgment, the Supreme Court summarized the legal position as follows :-

" (i) A Debts Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-liquidation, but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him;

(ii) A District Court entertaining an application under Section 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in-liquidation, but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him;

(iii) If a financial corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor

company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the Company Court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529-A and Section 529 of the Companies Act.

(iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act

regarding distribution of the assets

of the company-in-liquidatiion."

5. In the present case, it has been stated before the Court that the State Bank of India was a secured creditor which stood outside the winding up proceedings. The proceedings were initiated before the Debt Recovery Tribunal for the realisation of its dues, which resulted in a decree as noted earlier in the amount of Rs.51.31 crores. In terms of the principles enunciated by the Supreme Court, the Debt Recovery Tribunal is entitled to order the sale of the properties of the Debtor, even if a Company in liquidation, through its Recovery Officer after notice to the Official Liquidator. As the Supreme Court has observed, the distribution of the proceeds where a company is being wound up can only be in accordance with Section 529-A read with Section 529 of the Companies Act, 1956. The Liquidator represents the entire body of the creditors including the workers. The distribution of the sale proceeds under the directions of the Company Court is the responsibility of the Liquidator. In fact the Supreme Court has held

that there is a need to associate the Liquidator with the process of sale to ensure that the best price is realised for the assets of the company in liquidation.

6. In the present case, it is urged on behalf of the Applicant that (i) a dividend of 100 paise in the rupee was declared in favour of the workers; and (ii) the difference between the price that is being realised on a proposed private treaty between the Applicant and the Second Respondent and the decretal dues of which the Second Respondent is the assignee is so large that no unsecured creditor can expect to be paid any part of his dues. Hence it was urged that a private sale should be allowed to proceed because no unsecured creditor can possibly expect to realise his dues. Such a presumption cannot be drawn at the present stage and would be entirely premature. The Liquidator has placed an objection before the Debt Recovery Tribunal to a private treaty on the ground that the interest of the creditors would warrant the holding of a public auction. Whether or not, the sale should be sanctioned as proposed by the Second Respondent

which is an assignee of the decree obtained by the State Bank of India is a matter for the Debt Recovery Tribunal to consider in the light of the objection raised by the Official Liquidator.

7. This Court would not justified in preventing the Official Liquidator from raising his objection or from participating in the proceeding before the D.R.T. This is to exactly what is sought to be achieved by the relief claimed before the Court in terms of prayer clauses (a) and (b) which are to the following effect :-

> "(a) that the Respondent No.1 be restrained by an order and injunction from in any manner opposing, objecting to or interfering with the proposed sale of flat No.13-A, Lands End, Doongersi Road, Malabar Hill, Mumbai - 400 006 in favour of the Applicant which is the subject matter of proceeding before DRT Recovery Officer I;

(b) that the Respondent No.1 be restrained from taking any further steps before the DRT RO in Recovery Proceedings 147 of 2005 in Original Application No.326 of 2000 including any steps in the nature of filing applications/affidavits before the Recovery Officer for the sale of the said flat by public auction or for any matter connected therewith.

8. Plainly the reliefs sought cannot be granted. Prayer clause (c) is to sanction the sale in favour of the Applicant. The grant of such relief would transgress the limitations on the jurisdiction of the Company Court, as explained in the judgment in **Allahabad Bank**.

9. In the circumstances, the reliefs which have been sought in the Company Application cannot be granted. The application is dismissed.